

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  MR. AND MRS. GREGORY SWECKER,  Complainants,  vs.  MIDLAND POWER COOPERATIVE,  Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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**ORDER REGARDING PETITIONS TO INTERVENE**

(Issued August 27, 1999)

On July 12, 1999, Mr. Bob Welch filed a petition to intervene in this case. Mr. Welch is unrepresented by legal counsel, and the rules regarding the form of his petition were waived in an order issued July 15, 1999. In his petition, Mr. Welch states that he operates a generator on his property, and that Midland Power Cooperative is his electric provider. He would like to intervene to testify regarding his experience with co-generation and Midland Power Cooperative.

On July 16, 1999, the Iowa Citizen Action Network (ICAN) filed a petition to intervene in this case. ICAN is unrepresented by legal counsel, and wants to be represented by Ms. Lisa Davis Cook, Program Organizer. In its petition, ICAN states that it is a citizen group which has been involved in the issue of renewable energy,

and is an advocacy organization committed to the increased use of renewable energy in Iowa. It states that its members have a direct interest in the outcome of this case because of the environmental and economic benefits renewable energy has to offer, and that its members are concerned with discriminatory tariffs and net billing. Furthermore, it states that its members are customers of rural electric cooperatives, municipal utilities, and investor-owned utilities, and many would like to install renewable systems. It states its members will be "directly affected by the outcome of the case in terms of the viability of renewable energy systems." It states it is knowledgeable about net metering and its effect on the development of renewable energy. ICAN wants to be allowed to intervene to testify regarding renewable energy, discriminatory tariff rates, and net metering.

Also on July 16, 1999, the Iowa Association of Electric Cooperatives (IAEC) and Central Iowa Power Cooperative (CIPCO) filed a joint petition to intervene. The IAEC and CIPCO are represented by their attorneys Mr. Dennis Puckett, Mr. John Ward, and Mr. Michael Joynt. In its petition, the IAEC states it is a trade association representing thirty-eight electric distribution cooperatives in Iowa and five generation and transmission cooperatives which provide power to the distribution cooperatives. CIPCO states it is a generation and transmission cooperative which provides wholesale electric service to thirteen distribution cooperatives and one municipal electric cooperative in Iowa, one of which is Midland Power Cooperative. The IAEC and CIPCO state that this case raises questions which could impact all of the

members of the IAEC and which could impact power supply provided by CIPCO. They also state that their participation will assist in the development of a complete record.

On July 29, 1999, Mr. Swecker filed a motion to deny intervention by the IAEC and CIPCO. Mr. Swecker argues that the issues in this case relate to Midland's rates and cost of service study and whether the rates are discriminatory, and not to those of other members of the IAEC. He also argues that allowing the IAEC to intervene could confuse and confound the evidence, because its members comprise thirty-eight different service areas which are immaterial to the issues in this case. He also argues that CIPCO should not be allowed to intervene because the generation of power by CIPCO is immaterial for the purpose of determining discrimination and the just and reasonableness of Midland's tariff rates to a QF. He argues that CIPCO's cost should already be reflected in the Midland cost of service study, and therefore testimony presented by CIPCO would be redundant and not material. Mr. Swecker states in his motion that the issues in this case would not impact the IAEC or CIPCO, and that the case only relates to whether Midland has violated Iowa law regarding discriminatory rates and disconnection.

On August 18, 1999, the IAEC and CIPCO filed a response to the Swecker's motion to deny intervention. The IAEC and CIPCO argue that this case raises unique legal issues and jurisdictional issues which could impact them, and that they meet the requirements of 199 Iowa Admin. Code §7.2(7)(d) for intervention. They

also state their participation will assist in the development of a complete record, and will allow the legal and jurisdictional issues to be fully considered.

On August 23, 1999, Mr. Swecker filed a response to the IAEC's and CIPCO's response to his motion to deny intervention. Mr. Swecker argues that the only material issue is whether Midland violated Iowa Code §476.21 and discriminated against the Sweckers because of their proposed use of a renewable energy source. Mr. Swecker argues the IAEC and CIPCO have not shown they have any unique or special interest in the subject matter of the case, and therefore have not shown they have a right to intervene. Mr. Swecker also argues the Board has the discretion to deny intervention under subparagraph (2), that intervention would prolong and complicate the proceedings, and that the current parties can develop a complete record. He states that these proceedings are the only avenue in which his interest may be protected, and requests that the IAEC's and CIPCO's petition be denied.

Petitions to intervene are governed by Board rules at 199 Iowa Admin. Code §7.2(7)(d). The rules provide for intervention of right, and permissive intervention.

Intervention of right is granted "When the petitioner has an interest in the subject matter of the proceeding, and [t]he petitioner's interests are unique and require representation in addition to the existing parties." 199 Iowa Admin. Code §7.2(7)(d)(1). The consumer advocate's role of representing the public interest is not interpreted as representing every potential interest in the proceeding. Id.

Permissive intervention may be granted to anyone who has an interest in the subject matter of the case but does not meet the requirements for intervention of right. Permissive intervention is discretionary with the board (or its designee). In deciding whether to grant permissive intervention, the following factors must be considered: 1) the prospective intervenor's precise interest in the subject matter of the proceeding; 2) the effect of a decision on the prospective intervenor's interest; 3) the extent to which the prospective intervenor's interest will be represented by other parties; 4) the availability of other means by which the prospective intervenor's interest may be protected; 5) the extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through the presentation of relevant evidence and argument. 199 Iowa Admin Code §7.2(7)(d)(2).

The rules further provide that the board may permit persons to be heard, to examine and cross-examine witnesses, and to testify under oath and be cross-examined at the hearing, without being parties. 199 Iowa Admin. Code §7.2(7)(f).

Mr. Welch and CIPCO meet the requirements for intervention of right. They each have direct interests in the subject matter of this case which are unique to them, and which are not represented by any of the existing parties.

ICAN and the IAEC do not meet the requirements for intervention of right. However, both entities have interests in the case, both have members who may be affected by the decision in this case, and the participation of both may assist in the

development of a complete record in the case. The interests of ICAN and the IAEC would probably not be represented by other parties in the case, and there are no apparent ways their interests would be protected other than by intervention.

Therefore, they should be allowed to intervene under 199 Iowa Admin. Code §7.2(7)(d)(2).

The hearing in this case is set for October 5 and 6, 1999. Mr. Welch, ICAN, CIPCO, and the IAEC have each stated they would like to file testimony and participate in the hearing. In order to accommodate the interests of the current parties and the intervening parties, an aggressive schedule for the filing of direct and responsive testimony must be implemented.

**IT IS THEREFORE ORDERED:**

1. The petitions to intervene by Mr. Welch, ICAN, CIPCO, and the IAEC are hereby granted.
2. If the intervenors wish to file prepared direct testimony and exhibits, they must do so by September 15, 1999. Prepared direct testimony is given in question and answer form. An example of the form of prepared direct testimony is attached to this order.
3. If Midland, the Sweckers, or the OCA wish to file prepared responsive testimony or exhibits to the intervenor's testimony, they must do so by September 29, 1999. If any of the intervenors wish to file prepared responsive testimony or

exhibits to any of the other intervenor's direct testimony, they must do so by September 29, 1999.

4. If the intervenors wish to file prepared rebuttal testimony and exhibits, they must do so by October 4, 1999.

5. Intervenors will receive copies of all documents filed after the date of this order, as well as all orders issued after the date of this order. Intervenors who wish to receive copies of prior filings and orders, may contact the other parties directly, or the Utilities Board record center at (515) 281-5563. The records center charges a fee for copying.

6. All previous orders issued in this case remain in effect.

**IOWA UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary, Deputy

Dated at Des Moines, Iowa this 27<sup>th</sup> day of August 1999.